

Town Council

Town of Watertown

Joint Meeting of the Committee on Public Works and the Committee on Public Safety

Meetings: March 6, 2013 and March 19, 2013

Report: March 26, 2013

The two committees met Wednesday March 6th at 7:00 pm in the Council Chambers to discuss the issue of snow and ice removal on private ways for the purpose of providing policy guidance to the Town Council.

Present were: Cecilia Lenk, PW Chair; Vincent Piccirilli, PS Chair & PW Secretary; and Angeline Kounelis, PS Secretary. Stephen Corbett, PW Vice-chair; and Kenneth Woodland PS Vice-chair; were absent. It was agreed that Councilor Lenk would chair and Councilor Piccirilli would take minutes. See attached sheet for others in attendance.

Councilor Lenk stated that as a result of complaints by residents on private ways, this issue was raised to the Town Council; and that the meeting on March 6th would focus on data collection and fact-finding. Three key topics were discussed:

1. What is the current DPW policy on snow and ice removal on private ways? A DPW report from September 22, 2009 states that DPW “would plow these locations only once at the end of minor to moderate storms.” (excerpt attached) Captain Dupuis stated that the police department does not enforce the winter or snow emergencies parking bans on private ways.
2. What is the complete list of private ways in Watertown? There are conflicts between the registry kept by the Town Clerk, the MassDOT database from the DPW, and the Traffic Rules and Orders used by the police department. Both Mr. Magoon and the DPW’s engineering consultant are assisting with research to confirm the list of private ways.
3. What is the law on snow and ice removal on private ways? Mr. Mee presented a memo from the Town Clerk (attached) describing M.G.L. Chapter 40 Section 6C which governs this issue. Watertown never adopted this section of the law as stipulated under Section 6D. Mr. Mee stated that the DPW currently plows private ways in the interest of public safety, not for the convenience of the residents, and therefore he understood that the Town was allowed to do so as an exception to Section 6C.

Two motions were raised and passed with an affirmative vote of 3 to 0:

1. To request the Administration provide the two committees with a complete, legally vetted list of all private ways in Watertown. The two committees understand this could be a long process, but asked that they be provided by the March 19th meeting with a proposed date for the completion of this task.
2. To request the Town Attorney provide a legal opinion to the two committees, by the March 19th meeting, if under state law Watertown can expend money for snow and ice removal on private ways for “public safety” reasons.

The meeting adjourned at 8:00 pm.

The two committees re-convened on Tuesday March 19th at 7:00 pm in the Council Chambers.

Present were Councilors Lenk, Piccirilli, Corbett and Woodland. Councilor Kounelis was absent. See attached sheet for others in attendance.

Attorney Reich presented an opinion letter (attached) that stated under Massachusetts General Law there was no public safety exception for snow and ice removal on private ways.

Mr. Magoon presented a letter (attached) of the currently confirmed list of private ways, as well as an estimate of approximately July 1, 2013 for completing the investigation to resolve discrepancies within the records.

Questions from committee members as well as from the audience focused on the process of the ballot initiative, and the potential impact on parking on private ways. Attorney Reich explained that Chapter 44 Section 6D has very specific language for the ballot initiative, and that this initiative could be brought forth by the Town Council or using the citizen's petition process in the Watertown Home Rule Charter. In his opinion, if such an initiative were to pass, the Town Council could set rules governing parking to assure the ways could be safely plowed. He also stated that the private ways plowed under such an initiative must be open to the public, not incidental to the use of the abutters.

Three motions were raised and each passed with an affirmative vote of 4 to 0.

1. Based upon the legal facts presented and absent acceptance of M.G.L. Chapter 40 Section 6C the Town of Watertown cannot appropriate funds for snow and ice removal on private ways; therefore the Town Council has no legal authority to issue a policy directive to the contrary; and furthermore any policy directive to the contrary may cause the Administration to violate M.G.L Chapter 44 Section 31, which prohibits the Town from incurring liabilities in the absence of such an appropriation.
2. Recommend that the Town Council instruct the Administration to:
 - Comply with Mass General Laws regarding the DPW's current practice of providing snow and ice removal on private ways.
 - Send a letter, as soon as practical but no later than July 1, 2013, to each property owner on each affected private way, advising them of their legal responsibility for providing snow and ice removal on their private way and that the Department of Public Works will no longer be providing such services.
 - Install, no later than July 1, 2013, a "Private Way" sign, of uniform size, wording, and color, located adjacent to the street name sign, where each private way intersects a Town way, to provide adequate notice to abutters, Town employees, and the general public as to the legal status of the way.
3. Recommend that the Town Council refer to the Public Works Committee the task of reviewing the status of the complete list of all private ways in Watertown.

The meeting adjourned at 7:35 pm.

Report submitted by: Vincent Piccirilli

Attendance List March 6, 2013

Name	Address or Title
Gerald Mee	DPW Superintendent
Steven Magoon	Director of Community Development & Planning
Captain Raymond Dupuis	Watertown Police Department
Ed Baptista	Highway Supervisor
Joe Aiello	Property & Buildings Supervisor
Mary Haley	DPW Principal Clerk
Cindy Coffin	DPW Head Clerk
Lori Moran	DPW Principal Account Clerk
Susan Falkoff	Town Councilor
Mark Sideris	Town Council President
Joan Kraus	Oliver Road
James Kraus	Oliver Road
Maria Saiz	Hovey St
Russ Arico	Fayette St
Garrett Quinn	Watertown Tab reporter
Charlie Breitrose	Watertown Patch reporter

Attendance List March 19, 2013

Name	Address or Title
Mark Reich	Town Attorney/Kopelman & Paige
Gerald Mee	DPW Superintendent
Steven Magoon	Director of Community Development & Planning
Mary Haley	DPW Principal Clerk
Lori Moran	DPW Principal Account Clerk
Mark Sideris	Town Council President
John Donohue	Town Councilor
Anthony Palomba	Town Councilor
John Straus	Arthur Terrace
Matt Riegert	Lyons Court
Dana Riegert	Lyons Court
Cass Sapir	Arthur Terrace



TOWN OF WATERTOWN

DEPARTMENT OF PUBLIC WORKS

124 ORCHARD STREET

WATERTOWN, MASSACHUSETTS 02472

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page 11 from Joint Meeting of
Committee on Public Works
and the Committee of the
Budget and Fiscal Oversight
Report dated
September 22, 2009

Department of Public Works Proposed Options for Joint Subcommittee Review Further Cuts in Snow and Ice Costs - Private Ways

The Department continued its review of the snow and ice program with the goal of identifying areas to reduce costs with minimal impact to service delivery.

Elimination of free salt and modification of the service approach to flats have been discussed in preceding memos. The next area for potential cost reductions was determined to be the service furnished to private ways.

Private ways

Mass General Laws does not allow municipalities to expend tax dollars on private ways. Previous delivery of snow and ice services on private ways was performed strictly as public safety move to facilitate access by fire and other emergency apparatus to these streets. In this day and age of mechanized equipment, however, five or six inches of snow on a street will not prevent emergency apparatus from successfully reaching these destinations.

The approach under discussion would be to plow these locations only once at the end of minor to moderate storms. Treatments would be applied at the end of the storm at the discretion of the Superintendent of Public Works or the Highway Supervisor. The Department would exercise the option of additional service delivery under extremely dangerous situations.

Below is a list of private ways that would qualify for elimination if the council were to undertake such a move.

Ashland Street	Church Place	Green River Way	Panteline Terrace
Arthur Terrace	Coker Street	Jackson Road	Paramount Place
Arundel Terrace	Circuit Lane	Jewett Street	School Lane
Barbara Terrace	Coker Street	Ladd Place	Stanley Ave
Bellevue Terrace	Cozy Street	Lyons Court	Swetts Court
Bigelow Terrace	Dana Terrace	Melville Terrace	Vivian Drive
Brown Street	Ellen Terrace	Oak Place	Wheeler Court
Chadbourne Terrace	Florence Terrace	Oliver Road	Wollitzer Lane
Church Lane	Gilkey Court		
	Green Street Terrace		

As with other proposed items, we can expect strong objections from the public. To produce cost savings in the field of snow and ice is tremendously difficult. Each and every action can possibly have negative outcomes. Respecting the necessity to produce cost savings yields this option for your review. We welcome your thoughts.



John E. Flynn
Town Clerk / Chief Election Officer

TOWN OF WATERTOWN
Office of the Town Clerk

Administration Building
149 Main Street
Watertown, MA 02472
Phone: 617-972-6486
Fax: 617-972-6595
www.watertown-ma.gov

To: Gerald S. Mee, Superintendent of Public Works

From: John E. Flynn, Town Clerk JEF

Subject: Acceptance of Massachusetts General Laws C. 40 Sections 6C, 6D, 6N

Date: March 5, 2013

Per your request regarding the acceptance of the above referenced sections please be advised that the Town of Watertown has not accepted these sections.

C. 40 section 6C-**Removal of ice and snow from private ways; conditions.** This provides for a funding source "for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council; provided, that, for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of the way."

This section is predicated upon the acceptance of section 6D-**Removal of ice and snow from private ways; submission to electorate; ballot.** Section six C "shall be submitted for acceptance to the registered voters of a city if the city council thereof so votes ... If a majority of the votes in answer to said question is in the affirmative, then said section shall thereupon take full effect in such city or town , but not otherwise." If the Honorable Town Council were to submit this question to the registered voters it would be placed on the ballot at a regular city election (November 5, 2013).

C.40 section 6N-**Private Ways; Temporary repairs, ordinance or by-laws**. The Town of Watertown accepted C.40 6E-**Private Ways; Temporary repairs** on March 5, 1957 and it was repealed by **St. 1977, c693 §1**.on October 31, 1977. The Legislature then amended C.40 section 6N was added by **St. 1975, c 551 and amended by St. 1977, c 693 §2**. The Town did not take action on this matter.

If you have any questions, please contact me.

Thank you for your attention in this matter.

cc. Michael J. Driscoll, Town Manager

PART I. ADMINISTRATION OF THE GOVERNMENT**TITLE VII. CITIES, TOWNS AND DISTRICTS****CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS****PURPOSES FOR WHICH TOWNS MAY APPROPRIATE MONEY****Chapter 40: Section 6C. Removal of ice and snow from private ways; conditions**

Section 6C. A city or town which accepts this section in the manner provided in section six D may appropriate money for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council or selectmen; provided, that, for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of a way.

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PART I. ADMINISTRATION OF THE GOVERNMENT**TITLE VII. CITIES, TOWNS AND DISTRICTS****CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS****PURPOSES FOR WHICH TOWNS MAY APPROPRIATE MONEY****Chapter 40: Section 6D. Removal of ice and snow from private ways; submission to electorate; ballot**

Section 6D. Section six C shall be submitted for acceptance to the registered voters of a city at a regular city election if the city council thereof so votes, and of a town at an annual town election upon petition of two hundred registered voters or of twenty per cent of the total number of registered voters, substantially in the form of the following question, which shall be placed on the official ballot used for the election of officers at such city or town election:

Shall the city (or town) vote to accept the provisions of section six C of chapter forty of the General Laws, which authorize cities and towns to appropriate money for the removal of snow and ice from private ways therein open to public use?

YES.	<input type="checkbox"/>
NO.	<input type="checkbox"/>

If a majority of the votes in answer to said question is in the affirmative, then said section shall thereupon take full effect in such city or town, but not otherwise.

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March 15, 2013

Mark R. Reich
mreich@k-plaw.com

Hon. Mark S. Sideris and
Members of the Town Council
Watertown Administration Building
149 Main Street
Watertown, MA 02472

Re: Removal of Snow and Ice from Private Ways

Dear Members of the Town Council:

You have requested an opinion regarding whether the Town may remove snow and ice from private ways for “public safety” reasons. As I understand the circumstances, the Town Council would like to ensure that the Town is in full compliance with all statutory requirements regarding the use of public funds and public resources, particularly with respect to activities on private property.

In my opinion, the Town may not remove snow and ice from private ways for any reason, including public safety, unless it has accepted the provisions of G.L. c. 40, § 6C. In the absence of acceptance of the statutory provisions, the Town has no inherent power to spend municipal funds or use municipal resources to remove snow and ice from private ways, in my opinion.

The provisions of G.L. c. 40, § 6C state as follows:

A city or town which accepts this section in the manner provided in section six D may appropriate money for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council or selectmen; provided, that, for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of a way.

The statute makes clear, in my opinion, that the Town may not appropriate funds for removal of snow and ice from public ways absent acceptance of the statute. Pursuant to the provisions of G.L. c. 44, § 31 the Town may not incur a liability in the absence of an appropriation. The removal of snow and ice from private ways would constitute such an impermissible liability, in my opinion.

Acceptance of the provisions of G.L. c. 40, § 6C is subject to the requirements of G.L. c. 40, § 6D, which require acceptance by ballot vote at a regular city election. Until such a ballot question is voted upon in the affirmative by a majority of the voters of the Town, removal of snow and ice from private ways in the Town is prohibited, in my opinion.

KOPELMAN AND PAIGE, P.C.

Hon. Mark S. Sideris and
Members of the Town Council
March 15, 2013
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Please contact me if you have any further questions regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark R. Reich". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark R. Reich

MRR/bp
cc: Town Manager
469692/WATR/0103



PART I ADMINISTRATION OF THE GOVERNMENT
(Chapters 1 through 182)

TITLE VII CITIES, TOWNS AND DISTRICTS

CHAPTER 44 MUNICIPAL FINANCE

Section 31 Liabilities in excess of appropriations forbidden; exceptions

Section 31. No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only by a vote in a city of two-thirds of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such proceedings. Payments of final judgments and awards or orders of payment approved by the industrial accident board rendered after the fixing of the tax rate for the current fiscal year may, with the approval of the director of accounts if the amount of the judgment or award is over ten thousand dollars, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

The provisions of this section, so far as apt, shall apply to districts, and the prudential committee, if any, otherwise the commissioners, shall act in place of the members of the city council or selectmen.



TOWN OF WATERTOWN

DEPARTMENT OF PUBLIC WORKS

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TO: Honorable Town Council

FROM: Gerald S. Mee, Jr.
Superintendent

Steve Magoon
Community Development Director

DATE: March 15, 2013

RE: Private Ways

In response to the Town Council request I have investigated through our consultant the time necessary to analyze the private way listing and anticipate an additional 90 days of investigation required to complete the analysis and prepare a report for review.

As you are aware during preparation for the Capitol Improvement Road Management Program a number of questions were raised with respect to various streets and private ways town wide.

Initial investigation by the Planning Department, Clerk's Office and Public Works Department revealed insufficient records to make a clear determination on many of the Private Ways.

Therefore, the department opted to perform an additional investigation utilizing our consultant World Tech Engineering and developed a strategy to investigate further through the Registry of Deeds, Mass DOT, Assessor's, GIS maps and Public Works plans and records as well as researching abutters records and deeds in an attempt to confirm each and every Private Way in question.

This is an ongoing process which is anticipated to take an additional 90 days to complete and develop a report.

Although this investigation was initiated for the road management program I believe this same information could be used for the private way snow plowing issue.

Below is a list of what I believe to be actual private ways as referenced from the Traffic Rules and Orders excluding private development driveways. This list is not intended to be a comprehensive list. The investigative process may reveal the necessity for changes to the list by adding additional private ways and/or deleting.

Arthur Terrace - 19 Adams St. to dead end
Arundel Terrace - 40 Boyd St. to Newton line
Ashland Street - 375 Arlington St. to Keith St.
Barbara Terrace - 255 Orchard St. to private land
Bellevue Terrace - 202 Bellevue Rd. to private land
Bigelow Terrace - 24 Boyd St. To Newton line
Brown Street - 141 Sycamore St. to Waltham line
Chadbourn Terrace - 114 Elm St. to dead end
Church Lane - 67 Pleasant St. to private land
Church Place - 32 Church St. to dead end
Circuit Lane - 1071 Belmont St. to Waltham line
Coker Street - 177 Sycamore St. to Waltham line
Cozy Street - 195 Summer St. to dead end
Dana Terrace - 48 Summer St. to dead end
Ellen Terrace - 321 Lexington St. to dead end
Florence Terrace - 102 Spring St. to private land
Gilkey Court - 34 Patten St. to dead end
Green Street Terrace - 38 Green St. to private land
Green River Way - 160 Waltham St. to dead end
Ladd Place - 15 Ladd St. to dead end
Lyons Court - 205 Watertown St. to Newton line
Melville Terrace - 6 Morse St. to dead end
Munroe Avenue - 63 Elm St. to dead end
Oak Place - 30 Cushman St. to 236 Palfrey St.
Oliver Road - 18 Adams St. to 15 Dexter Avenue
Panteline Terrace - 220 Orchard St. to dead end
Paramount Place - 542 Pleasant St. to dead end
Russell Street - 31 Perry St. to 36 Holt St.
School Lane - 741 Mt. Auburn St. to B. & M. R.R.
Stanley Avenue - 172 Waltham St. to Pleasant St.
Swetts Court - 78 Waltham St. to dead end
Thayer Road - Brown St. to town line
Vivian Drive - 58 Green St. to dead end
Wheeler Court - 94 Elm St. to B. & M. R.R.
Wollitzer Lane - 39 Myrtle St. to 34 French St.

cc Michael Driscoll, Town Manager
Mark Reich, Town Counsel
Steve Magoon, Community Development Director




WWW.WORLDTechENGINEERING.COM

MEMORANDUM

DATE: March 15, 2013

TO: Gerald Mee, Superintendent – Watertown DPW

FROM: Richard Benevento 

RE: Private Ways Investigation

I would like to update you on the progress of completing the investigation and evaluation of private ways in Watertown. During the preparation of the Pavement Management Program and Capitol Plan an initial investigation was completed to confirm accepted roadways. The purpose of the investigation was to identify accepted roadways within the Town and to confirm MassDOT Chapter 90 listing of accepted roadways. As you know the results of the investigation reveal several inconsistencies between MassDOT's listing, roadways identified in the Town's Traffic Rules and Orders and roadways which appear to be accepted. At your request WorldTech has begun a more in depth investigation to confirm our initial finding. In order to determine proper ownership the magnitude of the research effort will include Town files at DPW, Assessor's and GIS mapping, the Middlesex County Registry of Deeds, MassDOT and other sources. We anticipate the work effort will be completed or on or before June 1, 2013

We will keep you apprised of information as it becomes available. In the meantime if you have any question or require additional information please call.